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STATEMENT OF ARTHUR M. COX,
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BEFORE THE
FOREIGN OPERATIONS AND GOVERNMENT INFORMATION SUBCOMMITTEE OF THE
COMMITTEE ON GOVERNMENT OPERATIONS

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Mr. Chairman, I appreciate the opportunity to testify before your committee. As you know, I am writing a book dealing with the subject of national security and secrecy which will be published in 1975.

Since World War II, the U. S. Government has conducted most of its foreign and defense affairs in secret on grounds of national security. The drafters of the Constitution did not contemplate the problem of secret government nor has that problem been dealt with in subsequent amendments. Despite the lack of checks and balances, a large consensus of the American public granted to successive Presidents extraordinary secret powers to protect the security of the nation. But that widespread public trust came to an end in the Vietnam war because the American people were lied to week after week. The Pentagon Papers exposed the depth of the lying which led in turn to a cover-up--the Ellsberg case and the White House plumbers--Watergate and the impeachment proceedings and more cover-up. The conflict between secrecy and democracy has reached crisis proportions. Cynicism and mistrust is rampant because the American people have been deceived by their leaders. In order to restore confidence it will be necessary to sharply reduce secrecy and to establish checks and balances to insure accountability for essential secrecy.

In my opinion, the Executive Branch should never have been granted such broad powers for secret government. Highly classified information should be linked to our national survival. Actually the survival of our nation has been at risk only twice in our nearly 200 years--the Civil War and the early stages of World War II. A case can be made that there was an important threat too during the Stalin years of the Cold War. But since the Korean War, the risk of an attack threatening our survival has decreased. As the Cold War has diminished, moving slowly towards detente, secret government has proliferated all the way to the rottenness of Watergate and all that it symbolizes.

Now how could this happen? It happened because the overwhelming majority of the American people formed a consensus believing that matters of foreign policy and defense should be entrusted fully to the President and his Executive Branch. The people felt that in matters of national survival the President

should be given total trust. Foreign affairs and domestic affairs have been inextricably linked by reality, but starting in 1948 when Senators Vandenberg and Connolly enunciated a spirit of bi-partisanship in foreign affairs; succeeding Presidents were given the benefit of the doubt and partisan politics were played down. The public was united in supporting the struggle against Communism. A consensus existed in foreign affairs until the Vietnam war--until the people stopped trusting the President.

The power to utilize secrecy granted Presidents Roosevelt and Truman grew out of real public fear for our nation's safety. There was a fear of fifth columns and spies as the people began to hear more and more about the conspiratorial apparatus of international communism. Then came the spy trials of Hiss, Coplon, Klaus Fuchs and the Rosenbergs, which were linked, inaccurately, to the Soviet achievement of the atomic bomb. Senator Joseph McCarthy fueled the anxiety by claiming that hundreds of U. S. Government officials were communist spies.

As the cold war expanded, the U. S. resorted to a growing range of clandestine operations against the communists "fighting fire with fire." It was accepted that the end of defeating communism justified any necessary means even in violation of law. A mystique was developed in the government which rationalized illegal operations so long as they were not directly attributed to the U. S. Government or could be plausibly denied. As we have observed, this kind of thinking led to the White House plumbers who broke U. S. laws on grounds of national security. The ultimate perversion of these unconstitutional trends occurred when the Committee to Re-elect the President adopted the CIA techniques of covert political warfare on grounds that the end of re-electing President Nixon justified such means.

Not only has secrecy caused erosion of our democratic process and a breakdown in popular trust of our government, but there have also been serious economic consequences. Millions of dollars of U. S. taxpayers' money are wasted each year because of excessive secrecy. Secrecy stifles competition and efficiency. For example, Dr. Edward Teller, a nuclear weapons authority and advocate of openness in science, says that we have too much secrecy even in the field of nuclear reactors. In testimony before Senator Muskie's subcommittee on Intergovernmental Relations, June 10, 1974, Dr. Teller noted that nuclear "research was opened up at the first 'Atoms for

Peace' conference in 1955. . . Openness led to the establishment of schools of nuclear engineering, to vigorous industrial participation and in a dozen years to competitive production of electricity. This was due to the accumulation of dozens of small improvements, not to any major discovery. In the secret and sheltered atmosphere of government laboratories all this would not have happened."

Secrecy has led to the production of weapons which are ineffective or inadequate. Huge cost over-runs which might have been prevented by Congressional oversight occur because insufficient information is available on grounds of national security. Congress is persuaded to authorize increased defense spending based on potential enemy threats that are not fully disclosed because the information is secret. Often, after the fact, it is discovered that the threat has been exaggerated. Vast security systems have been installed throughout a large segment of U. S. business to protect Government secrets. This has been expensive, relatively ineffective and runs counter to good business practice.

The great mistake, I think, is that we came to believe that the best way to deal with a totalitarian, closed society, i.e., the Soviet Union, was to adopt the tactics and means of that closed society. For all practical purposes the national security side of the U. S. Government became a closed society. We adopted the clandestine techniques of political warfare and espionage. We became expert in the trade-craft of conspiracy and deception all rationalized on grounds that this was the most effective means to fight communism. In the process we damaged our democratic system more profoundly than any communist spy-ring could have. Our democracy thrives on strong public participation and open government. Our competition with the communist societies of the Soviet Union and China will also thrive on openness.

There is still a need for a strong, adequate defense establishment, a counter-intelligence program in our F.B.I. and confidentiality in some of our diplomatic negotiations, but in my opinion the more open we are with our people in discussing the facts about our strengths and weaknesses, the stronger we will become.

With that as background, Mr. Chairman, I want to indicate my admiration for the work you and your committee have accomplished in the past several years in this field. I think the Freedom of Information Act is a great

step forward. I believe, further, that H. R. 12004 will provide an amendment to that act which will greatly strengthen its purpose. The need for including procedures for making public information presently defined as national security information is long overdue. I believe it is important to link this law as an amendment to the Freedom of Information Act. I have examined all of the bills dealing with this subject presently being considered in the House and the Senate and consider yours potentially most useful. I believe the establishment of a Classification Review Commission as set forth in H. R. 12004 is the most workable approach to meet the needs of Congress with sufficient authority and independence, while at the same time recognizing the need for Presidential appointment and Executive Branch locus.

A new reason has emerged which strengthens the case for Congressional legislation in the field of so-called national security secrecy. The recent unanimous Supreme Court decision in the case of the White House tapes expressed in the opinion of Chief Justice Burger linked national security information with executive privilege. Chief Justice Burger referred to the Constitutional underpinnings for the doctrine of executive privilege and linked that privilege to the need to "protect military, diplomatic or sensitive national security secrets." I believe this interpretation and definition could be dangerously misinterpreted, permitting the Executive Branch to sidestep essential accountability. I believe your bill, if it can provide a fuller definition of national defense information, along with its provision for a Classification Review Commission, will go a long way towards resolving the ambiguity and potential for corruption to which some interpretations of Chief Justice Burger's opinion might lead.

I note that all of the representatives of the Executive Branch who have testified have argued that no new Congressional action is necessary because they consider Executive Order 11652, issued by President Nixon in March 1972, to be adequate for the purpose of making more information available to the public while protecting essential security. Many of the arguments put forward have considerable merit, but they fail to recognize sufficiently the great loss of public trust in the Executive Branch and the public demand for better checks and balances. A recent study for

Senator Muskie's subcommittee conducted by the pollster Louis Harris shows a public majority favoring "tight checks by elected legislators, the courts and citizen groups to watch closely over what government is doing." The survey shows the American people "are trying to articulate two profoundly held sentiments:

1. That government secrecy no longer can be excused as an operational necessity, since it can exclude the participation of the people in their own government, and, indeed, can be used as a screen for subverting their freedom; and
2. That the key to any kind of successful future leadership must be iron-bound integrity. This matter of honesty and straight-dealing has the public deeply alarmed. It cannot be underestimated. The American people will not rest easy until it feels that integrity in government at all levels is secured."

The public has learned that control of information is control of power and that secret government breeds arrogance, self-righteousness, and corruption. A vast majority of the people want the checks and balances of Congress to be strengthened and your amendment could play an important part.

I would like to make a few specific remarks about the amendment. I believe there will be considerable difficulty with the term "national defense information" unless the term is defined specifically to include certain aspects of diplomacy and intelligence not relating to the national defense of the United States. For example, in the recent negotiations with Syria and Israel, Secretary Kissinger held most of what was said in confidence though it was not directly related to the defense of the United States. In diplomacy, information is held in confidence very often not because it would be prejudicial to U. S. security but because its disclosure might damage the interests of an allied government or, very often, might cause the breakdown of negotiations with an adversary government. In both diplomacy and intelligence we share, through liaison, secrets of foreign governments. The release of their secrets would not damage the national defense of the United States, but it would certainly dry up further exchanges of information.

There are numerous other possible examples of the need for maintaining diplomatic confidentiality. There are two ways to handle this: either to broaden the definition of national defense of the United States or to establish a separate classification system to protect non-defense information which is expressly limited to our relations with foreign governments, especially information that they give us relating to their security.

I believe that there is another type of information that should be clearly separated from your amendment. This is the executive privilege information. Obviously, Presidents through the years will have political and private information that they don't want made public. Such information might be classified "official use only" or some such term, but should never be covered by the security classification system as has often been the case through the years and as it has been linked in the recent Supreme Court decision. Top Secret, Secret, and Confidential classifications should be clearly limited to national defense information as defined. If such a limitation had been in existence in the last few years, some of the misconceptions about national security information might have been avoided. It would also ensure that executive privilege information not be linked with certain national defense information subject to prosecution under the terms of the Espionage Act. The President can always fire anyone who leaks private political or personnel information from the White House, but such leaks have no relationship to the security considerations protected by the Espionage Act.

The functions of the Commission as spelled out in section (I)(g), page 22, of H. R. 1200⁴ are broad enough to provide for certain information from the CIA, but I would recommend a specific requirement. I believe that the legislation submitted by Senator John Sherman Cooper II of Kentucky in 1971, which recommended that National Intelligence Estimates be made available to Congress, is an excellent idea. In my opinion, Congress has been inadequately informed about major aspects of national defense, especially with respect to Soviet and Chinese powers. In fact, Congress has not had sufficient information to make sound decisions about the defense budget and other aspects of national defense such as military aid programs and the sale of arms. I believe this could be remedied if the National Intelligence Estimates (or National Intelligence Officer's Reports)

were transmitted by the Commission to all members of Congress or, failing that, to the appropriate committees of Congress. Occasionally, there may be an estimate containing sensitive information the disclosure of which might reveal the source. In such a case the Commission would be informed by the Director of Central Intelligence and arrangements could be made to paraphrase the report, providing the significant contents but protecting the sensitive information. In most cases this step will not be necessary because the actual report or estimate will not contain information requiring such special handling.

Thank you, Mr. Chairman.